

REMARKS/ARRGUMENTS

Initially, Applicants would like to express their appreciation to the Examiner for the detailed Official Action provided, and for acknowledgement of Applicants' Supplemental Information Disclosure Statement by return of the FORM PTO-1449.

Claims 1-8 are currently pending. Applicants respectfully request reconsideration of the outstanding objection and rejections, and allowance of all the claims pending in the present application.

As an initial matter, Applicants would like to thank the Examiner, Mr. Isam ALSOMIRI, for the courtesy of an interview extended to Applicants' attorneys, Mr. Enoch Peavey and Mr. Dan Moon, on April 10, 2006. During the interview, the differences between the present disclosure and the cited prior art were discussed. No agreement was reached. Further, the Examiner indicated that he would need additional time to review KUSAKA (U.S. Patent No. 5,578,812). However, the Examiner did indicate that he would take Applicants' arguments regarding the operation of the KUSAKA auto focus device into consideration.

In the Official Action, the Examiner rejected claims 1-8 under 35 U.S.C. § 103(a) as being anticipated by NAKAMURA et al. (U.S. Patent No. 5,578,812) in view of KUSAKA.

Applicants respectfully traverse the above noted rejection of claims 1-8 under 35 U.S.C. § 103(a).

In this regard, Applicants submit that NAKAMURA and KUSAKA fail to teach or suggest the combination of elements as recited in claim 1. In particular, claim 1 sets forth a surveying instrument including, *inter alia*, a distance measuring system; a phase detection autofocus system; an AF driver; a selector for setting a consecutive distance measurement mode in which said distance measuring system performs plural measurements of distances to said sighting object; and a controller which coordinates focusing operations of said AF driver with distance measuring operations of said distance measuring system in the consecutive distance measurement mode, such that said AF driver operates concurrently with distance measuring operation of said distance measuring system.

Applicants submit that NAKAMURA and KUSAKA, alone or in any proper combination, fail to disclose the aforementioned combination of elements. The Examiner acknowledged that NAKAMURA lacks any disclosure of a selector for setting a consecutive distance measurement mode in which said distance measuring system performs plural measurements of distances to said sighting object; and a controller which coordinates focusing operations of said AF driver with distance measuring operations of said distance measuring system in the consecutive distance measurement mode, such that said AF driver operates concurrently with distance measuring operation of said distance measuring system.

However, the Examiner attempts to supply the deficiencies of NAKAMURA by relying on the purported teachings of KUSAKA. In particular, the Examiner asserts that KUSAKA teaches an auto focus system which includes a selector for setting a consecutive AF, which includes the claimed controller and

performs plural measurements of distance to the object, the AF operating concurrently with the distance measuring system (page 3 of the Official Action).

However, contrary to the Examiner's assertions, Applicants note that KUSAKA teaches obtaining the object distance information from the defocus amount determined from the focus detection and the absolute position of the photo taking lens (Col. 21, lines 37-40). Therefore, it would appear that prior to determining an object's distance, a focusing operation must necessarily take place; and the distance is not determined (calculated) until the focusing operation is complete. Thus, the AF driver *does not operate concurrently with, i.e., at the same time as, the distance measurement operations of the distance measuring system*, since a focusing operation takes place *prior to* a distance determination.

In this regard, Applicants note that the present disclosure is very different structurally from the device of KUSAKA. The Examiner's attention is hereby directed to Fig. 7, which shows an exemplary embodiment of the present disclosure. In the embodiment of Fig. 7, an auto focus system (4) is provided separately from the distance measurement system (3). Further, the distance measuring system does not determine the distance based on a defocus amount. Instead, the distance measuring system is provided with an optical distance meter (30), and is capable of emitting measuring light and receiving reflected light to determine distance (see Spec. lines 5-10 and 18-20). Therefore, the distance measuring system of the present disclosure does not depend on a focusing/defocusing amount to measure distance. Thus, it is clear that the distance measuring system of the present disclosure is capable of operating *concurrently with* an AF driver.

The Examiner also asserts that the continuous/tracking mode selections of KUSAKA read on the selector for consecutive measurements (pictures/distances for AF). Further, the Examiner asserts that at least in the continuous/tracking modes the AF and the distance measurements must operate together “concurrently” for the system to work (Page 5 of the Official Action). However, contrary to the Examiner’s assertions, Applicants submit that the only difference disclosed between the single mode and the high speed continuous/tracking AF mode, as disclosed in KUSAKA, is that when in the continuous/tracking AF mode, instead of setting the AF area at the center spot mode, the AF area is set at a wide mode; and instead of setting an algorithm at a center priority mode, the algorithm is set at minimum distance priority mode. Further, the only difference between the single mode and the low speed continuous/tracking AF mode is that instead of setting the AF area at the center spot mode, the AF area is set at a center spot-wide mode; and instead of setting an algorithm at a center priority mode, the algorithm is set at minimum distance priority mode (see Col. 19, lines 54-67 and Col. 20, lines 1-9). Therefore, Applicants submit that prior to determining an object’s distance a focusing operation must necessarily take place, and the distance is not determined (calculated) until the focusing operation is complete.

Further, Applicants submit that the portions of the disclosure in KUSAKA that the Examiner cites to are specifically directed to, and relevant to, autofocus systems; whereas the teachings of NAKAMURA are directed to an autofocus system and a distance measuring system. Therefore, the teachings of KUSAKA would presumably only be relevant to the autofocus system, and not the particulars of a distance measuring system.

Accordingly, as noted above, Applicants submit that KUSAKA lacks any disclosure of a *selector for setting a consecutive distance measurement mode in which a distance measuring system performs plural measurements of distances to said sighting object, or a controller which coordinates focusing operations of an AF driver with distance measuring operations of a distance measuring system in a consecutive distance measurement mode, such that the AF driver operates concurrently with distance measuring operation of the distance measuring system.* Accordingly, Applicants submit that the teachings of KUSAKA could not reasonably be characterized as curing these deficiencies in the system of NAKAMURA. Thus, even assuming, arguendo, that the teachings of NAKAMURA and KUSAKA could be properly combined; the proposed combination still would not have resulted in the features of the embodiments of the present disclosure, as recited in claim 1.

A further aspect of an embodiment of the present disclosure, as recited in dependent claim 3, sets forth a surveying instrument including, inter alia, the coordinated focusing operations of the AF driver and the distance measuring operations of the distance measuring system in the consecutive distance measurement mode are initiated by a single push operation of a start button.

Applicants submit that NAKAMURA and KUSAKA, in any proper combination, lack any disclosure of the aforementioned features.

The Examiner asserts that NAKAMURA teaches the distance measuring system operating consecutively upon a single-push operation of a start button (page 3 of the Official Action). However, contrary to the Examiner's assertions, Applicants submit that there is nothing in the disclosure of NAKAMURA which requires a single push operation of a button to coordinate focusing operations of

the AF driver and the distance measuring operations of the distance measuring system. In this regard, Applicants submit that separate systems can be provided with separate operators, and that there is no disclosure in NAKAMURA of a single push button operation for both operations. Further, it is well settled law the "to establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Further, Applicants submit that the Examiner's assertion that providing a single push operation of a button to coordinate focusing operations of the AF driver and the distance measuring operations of the distance measuring system is a matter of obvious design choice is without factual support. Applicants submit that the Examiner has not presented sufficient motivation for the proposed modification, and that the only reason to make the proposed modification results from a review of Applicant's disclosure and the application of impermissible hindsight.

A further aspect of an embodiment of the present disclosure, as recited in dependent claim 4, sets forth a surveying instrument including, inter alia, the consecutive autofocus mode starting at the same time as the consecutive distance measurement mode.

Applicants submit that NAKAMURA and KUSAKA, in any proper combination, lacks any disclosure of the aforementioned features.

The Examiner asserts that it is inherent that the autofocus mode starts at the same time as the consecutive distance measurement mode (see Page 3 of the Official Action) because the autofocus is based on the distance to the target. Initially, the Examiner's assertion that the autofocus is based on the distance measurement system is incorrect.

Further, "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Accordingly, the rejection of claims 1-8 under 35 U.S.C. § 103(a) is improper for all the above reasons and withdrawal thereof is respectfully requested.

In view of the remarks/arguments herein, Applicants submit that independent claim 1 is in condition for allowance. With regard to dependent claims 2-8, Applicants assert that they are allowable on their own merit, as well as because they depend from independent claim 1, which Applicants have shown to be allowable.

Thus, it is respectfully submitted that all of the claims in the present application are clearly patentable over the references cited by the Examiner, either alone or in combination, and an indication to such effect is respectfully requested, in due course.

SUMMARY

Applicants submit that the present application is in condition for allowance, and respectfully request an indication to that effect. Applicants have argued the allowability of the claims and pointed out deficiencies of the applied reference. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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